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HUGO SLUIMER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HUGO SLUIMER,

Plaintiff,

v.

VERITY, INC., a corporation, and THE VERITY
INC. CHANGE IN CONTROL AND
SEVERANCE BENEFIT PLAN,

Defendants.

E-FILING

CASE NO. C 081220 SI

**DECLARATION OF SCOTT
KALKIN**

I, Scott Kalkin, declare under penalty of perjury, that:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California, the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeal and the United States Supreme Court. I am a partner in the firm of Robostoff & Kalkin. If called as a witness, I could and would competently testify to the facts set forth herein.

1 2. I graduated from USF Law School in June of 1985 and passed the California Bar
2 that same year. Upon passing the bar I was employed by the firm of Roboostoff & Allen as a
3 civil trial attorney specializing mostly in insurance litigation, personal injury claims, and
4 professional negligence claims. Almost all of my work since 1985 has involved representing
5 plaintiffs. In 1988 I became a partner in the firm's successor, Roboostoff & Kalkin, and have
6 been employed there ever since.

7 3. I have been litigating ERISA disability cases since 1995 and I estimate I have
8 handled well in excess of one hundred (100) of these matters to date. At any given time, my
9 current practice consists of between 50% and 75% ERISA related matters.

10 4. I have been on the Board of Directors of the San Francisco Trial Lawyers
11 Association since 1988. I was the organization's president in 2003 and was also a member of the
12 Board of Directors of the Consumer Attorneys of California (CAOC).

13 5. Both my firm and I are "AV" rated by Martindale-Hubble.

14 6. My current billing rates for ERISA related work range between \$275.00 and
15 \$475.00 per hour depending, among other factors, the complexity of the matter and the parties
16 involved. Given that many ERISA plaintiffs have a limited ability to contemporaneously pay
17 attorneys fees on an hourly basis, my firm also handles a significant number of ERISA matters on
18 a contingency basis, or some combination of a contingency fee and hourly rate, depending on
19 various factors we deem relevant to the particular case at hand. The hourly rates for ERISA
20 related work for other attorneys in my firm also range between \$275.00 and \$475.00.

21 7. Attached hereto as Exhibit A is a copy of an Order from the Honorable Maxine
22 M. Chesney in which she awarded my firm's requested fees at a rate of \$475 per hour in the
23 ERISA matter of *Ondersma v. Metropolitan Life Insurance Company* Northern District of
24 California Case No. C-06-0258 MMC.

25 8. During the course of my work with the various trial lawyers associations
26 referenced above, I have also become familiar with the rates charged by other attorneys who
27 litigate ERISA cases in the Bay Area and in other major metropolitan areas in the United States.

28 9. I am familiar with the background, experience, work and reputation of William

1 Reilly, and his firm, Rimac & Martin, in representing parties in ERISA cases. I have known Mr.
2 Reilly in a professional capacity since approximately 1997. He and I have discussed various
3 aspects of ERISA litigation on numerous occasions over the years.

4 10. In my opinion, Mr. Reilly and Rimac & Martin are among the premier firms in the
5 San Francisco Bay Area that handle ERISA litigation. Based upon my knowledge of the
6 prevailing hourly rates in the San Francisco Bay Area for ERISA related work, it is my opinion
7 that attorneys with skill, experience and a reputation in the community similar to Mr. Reilly's
8 can, and do, command hourly rates of at least \$450.00 per hour.

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 declaration was executed at San Francisco, California.

11
12 Date: 8/21/08

/s/ Scott Kalkin
13 Scott Kalkin

EXHIBIT A

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE ONDERSMA,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, et al.,

Defendants

No. C-06-0258 MMC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES,
COSTS, AND PREJUDGMENT
INTEREST; VACATING HEARING**

Before the Court is plaintiff's Motion for Attorney's Fees, Costs and Prejudgment Interest, filed February 14, 2008. Defendants have filed opposition, to which plaintiff has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court finds the matter suitable for decision on the papers, VACATES the March 28, 2008 hearing, and rules as follows:

1. For the reasons stated by plaintiff, and contrary to defendants' argument, the Court finds plaintiff is entitled to an award of attorney's fees. Although plaintiff has not made a sufficient showing that defendant denied plaintiff's claim in bad faith or that other plans would be deterred by such an award, the position taken by plaintiff was meritorious in that she obtained the relief she sought under the terms of the plan, defendant does not

1 dispute its ability to pay the requested award of fees and costs, and the instant action
2 established a ruling generally applicable to all plan participants, specifically, that the plan
3 does not include an unambiguous delegation of discretionary authority to the claims
4 administrator. See McElwaine v. U.S. West, Inc., 176 F. 3d 1167, 1172 (9th Cir. 1999)
5 (setting forth factors to be considered with respect to determination of whether award of
6 fees and costs is appropriate in ERISA action). Further, the Court finds no "special
7 circumstances" exist that "would render [an] award [of fees and costs] unjust." See id.
8 (holding successful ERISA plaintiff ordinarily entitled to award of attorney's fees and costs
9 in absence of "special circumstances").

10 2. For the reasons stated by plaintiff, and contrary to defendants' argument, the
11 Court finds the requested hourly rate of \$475 to be appropriate, given counsel's experience
12 and the prevailing rates in the community for attorneys engaged in similar practice. (See
13 Robostoff Decl. ¶¶ 2-7, 11, Exs. 2-4; Kalkin Decl. ¶¶ 2-8, 12, Ex. 1 ¶ 9; Coleman Decl.
14 ¶¶ 2-9.)

15 3. For the reasons stated by plaintiff, and contrary to defendants' argument, the
16 Court finds the hours claimed, specifically, 163.45 hours, to be reasonable under the
17 circumstances presented, which circumstances include, but are not limited to, the need of
18 plaintiff's counsel to analyze a voluminous administrative record, to respond to defendant's
19 motion pertaining to the standard of review, to conduct both legal and medical research
20 with respect to fibromyalgia, and to prepare for the court-ordered mediation.¹ Accordingly,
21 plaintiff will be awarded fees in the amount of \$77,638.75 (\$475 x 163.45).

22 4. The Court finds plaintiff is entitled to costs in the amount of \$1367.31, the amount
23 both parties agree is recoverable. (See Defs.' Opp. at 9:16-18.)²

24
25 ¹The reasonableness of the amount sought is further supported by plaintiff's decision
26 not to seek compensation for certain additional work for which such compensation
reasonably could have sought, for example, the time expended in complying with the
Court's order that the parties meet and confer as to the form of the judgment.

27 ²Although plaintiff initially sought an award of costs in the amount of \$1939.28,
28 plaintiff, in her reply, has agreed to limit her request to the amount defendants concede is
recoverable. (See Pl.'s Reply at 8:14.)

1 5. For the reasons stated by plaintiff,³ the Court finds an award of pre-judgment
2 interest is appropriate, and that plaintiff is entitled to pre-judgment interest in the amount of
3 \$21,350.01. (See Ondersma Decl., filed March 14, 2008, ¶¶ 2-4.)


4 **CONCLUSION**

5 For the reasons stated above, plaintiff's motion for an award of attorney's fees,
6 costs, and pre-judgment interest is hereby GRANTED, as follows:

- 7 1. Plaintiff is awarded attorneys' fees in the amount of \$77,638.75.
8 2. Plaintiff is awarded costs in the amount of \$1367.31.
9 3. Plaintiff is awarded pre-judgment interest in the amount of \$21,350.01.

10 **IT IS SO ORDERED.**

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12 Dated: March 24, 2008

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14 MAXINE M. CHESNEY
15 United States District Judge

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25 ³Defendants have not pointed to, nor does the record reflect, any equitable or other
26 consideration suggesting plaintiff should not be awarded pre-judgment interest. Cf. Shaw
27 v. International Ass'n of Machinists and Aerospace Workers Pension Plan, 750 F. 2d 1458,
28 1465 (9th Cir. 1985) (affirming decision declining to award pre-judgment interest to
prevailing ERISA plaintiff where defendant established "additional financial strain that an
award of pre-judgment interest would place on the [defendant] could injure other
beneficiaries of its pension plan").